

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: AUG 04 2022

ORDINANCE NO. 369 (2022)

An ordinance to authorize the Eastern Band of Cherokee Indians to provide certain benefits to enrolled members in compliance with IRS requirements for tax exemption under the federal General Welfare Exclusion (GWE).

WHEREAS, the Eastern Band of Cherokee Indians is a federally-recognized Indian tribe with sovereign powers of self-government; and

WHEREAS, Tribal Council is authorized and empowered to adopt laws and regulations for the general government of the Tribe, to govern the management of real and personal property held by the Tribe, and is vested with full power to enforce obedience to such laws and regulations as may be enacted by the Tribe (EBCI Charter and Governing Document § 23); and

WHEREAS, the Tribe has a responsibility to protect and promote the general welfare of its members and to assist in providing support to its members; and

WHEREAS, in 2014, Congress enacted the General Welfare Exclusion (GWE) Act (P.L. 113-168, 128 Stat. 1884 (Sept. 26, 2014)) in part to codify guidance issued by the U.S. Internal Revenue Service in June 2014 expressing when payments from tribes to tribal members and their spouses and dependents will qualify as non-taxable payments under the general welfare exclusion; and

WHEREAS, the I.R.S. guidance is expressed in Revenue Procedure 2014-35; and

WHEREAS, this ordinance authorizes the EBCI to provide certain benefits to its members in a way that complies with GWE requirements and Revenue Procedure 2014-35, so that Tribal members will receive those benefits free from federal income taxation.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that Cherokee Code Chapter 16C shall be amended to read as follows:

Sec. 16C-1. - Statement of policy.

(a) This chapter is enacted in order to promote the general welfare of the Eastern Band of Cherokee Indians and its members, to provide for fair and equitable per-capita distributions to eligible enrolled members from Class II and Class III gaming activities conducted by and on behalf of the Eastern Band of Cherokee Indians; and

1
2 (b) In order to have consistent terms and definitions throughout Tribal law as recently
3 recommended by the National Indian Gaming Commission, the Tribe has decided to use the term
4 "distributable net revenue," as defined in Section 16C-2 below, to establish the net gaming
5 revenues that must be distributed to the Tribe by all Tribal gaming operations and then further
6 distributed by the Tribe in accordance with this revenue allocation plan; and
7

8 (c) In order to provide for long-term investment of distributable net revenue derived from
9 Tribal gaming activities, to be invested in a manner which will provide for the general welfare of
10 the Tribe over a period of time longer than is presently provided in the Tribe's Gaming Compact
11 with the State of North Carolina; and
12

13 (d) In order to provide for an allocation of specified amounts to the Tribe's general fund, to
14 be used in the current operating budget of the Tribe in each fiscal year; and
15

16 (e) To provide funding for retirement of debt associated with Tribal gaming facilities,
17 schools, and other facilities, the development of housing and infrastructure of the Tribe, and for
18 the other purposes supporting the general welfare of the Tribe and its members as set forth in this
19 chapter.
20

21 **Sec. 16C-1.1 – Authority.**
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23 (a) The Tribe is authorized to establish laws, regulations and policies to provide general
24 welfare assistance to eligible Tribal members for services, activities and needs including
25 medical expenses, housing, utility and transportation expenses, energy assistance, health
26 and wellness activity expenses, social services expenses, cultural, spiritual and
27 educational expenses, and other related expenses.
28

29 (b) It is the Tribe's intent that the assistance provided pursuant to the laws, regulations and
30 policies described in subsection (a) may be provided in the following forms: (1) in the
31 form of per capita distributions of net gaming revenues, which are subject to federal
32 taxation; and/or (2) in the form of distributions under a General Welfare Exclusion
33 (GWE) Program in compliance with Revenue Procedure 2014-35 (including any
34 subsequent Internal Revenue Service guidance) so that such distributions are excluded
35 from gross income for federal income tax purposes.
36

37 **Sec. 16C-1.2 – GWE policies to be approved by Tribal Council.**
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39 The Tribe's General Welfare Exclusion Program shall be governed by written policies that
40 shall be reviewed and approved by Tribal Council before they shall be effective. Subsequent
41 amendments to the polices shall also be subject to Tribal Council approval.
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43
44 **Sec. 16C-2. - Definitions.**

1 For purposes of this chapter:

2 *Act* shall mean the Indian Gaming Regulatory Act, Pub. L. 100-497, 25 U.S.C. 2701 et seq.

3 *BIA* shall mean the Bureau of Indian Affairs, or the official of such agency with the duty or
4 assigned authority to act in behalf of the agency.

5 *Capital improvement program (CIP)* shall mean the program established to provide
6 funding for ongoing capital improvements of Tribal operations and programs.

7 *Cherokee Central Schools Assistance Fund* shall mean that fund established to provide
8 funding to implement the Cherokee Central Schools Strategic Plan and the Facility Master
9 Plan.

10 *Cherokee Central School Board* shall mean those officials elected to carry out the policies
11 and procedures for the Cherokee Central School System.

12 *Debt service sinking fund* shall mean the fund established for the purposes set forth
13 in [Section 16C-14](#).

14 *Distributable net revenue* shall mean all revenue distributed to the Tribe by a gaming
15 operation, which shall be calculated as follows: gross revenue of the gaming operation less (1)
16 prizes and operating expenses, (2) payments owed to a management contractor, (3) debt
17 service payments (including without limitation principal, interest, and related fees, costs, and
18 expenses), and (4) contributions to duly authorized capital/expansion reserve funds.
19 Distributable net revenue shall include surplus regulatory funds distributed to the Tribe by the
20 Tribal Gaming Commission.

21 *Eligibility for disbursement* shall apply to any person who is enrolled as of September 30,
22 1997, March 31, 1998, and each subsequent disbursement date thereafter with the Tribe,
23 provided that person is enrolled no less than 60 days preceding a scheduled disbursement and
24 meets all requirements of this chapter.

25 *Endowment and Investment Funds* shall mean the trust funds established pursuant to this
26 chapter to administer funds allocated for investment and appreciation for the long-term benefit
27 of the Tribe and its members.

28 *External investments* shall mean investments that may be made by the Minors Trust Fund,
29 Debt Service Sinking Fund and the Endowment and Investment Funds which must be made
30 under the Prudent Investor Rule, in accordance with the investments permitted to be made by
31 such funds in this chapter, as amended or supplemented from time to time.

32 *Equivalent degree* shall mean a high school diploma, GED, degree from a vocational or
33 technical college, or other appropriate educational institution as determined by the Tribe.

1 General Welfare Exclusion Program shall mean the laws and policies written or adopted by
2 the Tribe to provide a mechanism for providing benefits to eligible Tribal members in
3 compliance with Revenue Procedure 2014-35 of the U.S. Internal Revenue Service (IRS), so
4 that the benefits are treated as tax exempt by the IRS.

5 *Higher education* shall mean college, graduate, or professional school. Higher education ,
6 shall not mean secondary school.

7 *Higher education funding program* shall mean those funds established to provide funds to
8 benefit enrolled members who attend institutions of higher education.

9 *Housing Fund* shall mean the fund created for the purpose of providing funds to assist in
10 housing development as permitted to be made by this chapter, as amended or supplemented
11 from time to time.

12 *Interim Distribution Fund* shall mean a fund into which 50 percent of distributable net
13 revenue is deposited monthly by Tribal Management and from which funds are distributed as
14 per capita payments to competent adult members on a semi-annual basis and into the Minors
15 Trust Fund semi-annually for minor and other legally incompetent members. This Fund shall
16 be invested only in U.S. Treasury bills, other U.S. Government obligations or collateralized
17 bank certificates of deposits. Only one type of instrument shall be used during the accrual
18 period and the type of investment used will be determined by interest rate predictions within
19 the accrual period. The obligations shall have a maturity date of no later than November 15 and
20 May 15. The instrument used during each period shall be approved by the Investment
21 Committee and the Tribal Budget and Finance Office by September 1 and March 1.

22 *Internal investments* shall mean investments that are made by allocation or distribution of
23 funds through the Tribal budget process.

24 *Manager* shall mean that person or institution retained by the Tribe to manage and oversee
25 the investments of the Minors Trust Fund.

26 *Members* shall mean those persons who are duly recognized as enrolled members of the
27 Eastern Band of Cherokee Indians by the Tribe.

28 *Minor* shall mean a member who has not yet reached the age of 18 years.

29 *Minor Trust Fund* shall mean a fund created by the Tribe pursuant to [Section 16C-6](#) to
30 receive a portion of the distributable net revenue for and on behalf of enrolled minor and
31 incompetent members of the Tribe.

32 *Revenue allocation plan* shall mean this [Chapter 16C](#) of the Cherokee Code.

33 *State* shall mean the State of North Carolina.

34 *Tribal Council* shall mean the legislative body of the Eastern Band of Cherokee Indians.

1 *Tribal Court* shall mean the Cherokee Court established pursuant to Article 7 of the
2 Cherokee Code.

3 *Tribal Entity* shall mean only Qualla Housing Authority, Cherokee Boys Club, the Tribal
4 Casino Gaming Enterprise, the Tribal Bingo Enterprise, the Cherokee Indian Hospital
5 Authority and the Eastern Band of Cherokee Indians Community Development Corporation
6 (Sequoyah Fund).

7 *Tribal management* shall mean the Executive Committee and the Tribal Finance Officer,
8 who shall be jointly responsible for verifying the calculation of distributable net revenue on a
9 monthly basis for purposes of this chapter and for making monthly deposits of such
10 distributable net revenue into the appropriate accounts or funds under this chapter.

11 *Tribal shares* is defined as: Total Shares = 12 months/12 shares of the competent adult + 12
12 months/12 shares minors + x months per deceased members (as defined in [section 16C-](#)
13 [5\(b\)](#))/12 shares).

14 *Tribe* shall mean the Eastern Band of Cherokee Indians. It does not mean individual
15 members of the Tribe.

16 **Sec. 16C-9. Revenue allocation percentages.**

17 (A) Effective October 1, 2015, distributable net revenue shall be distributed to fund per capita
18 distributions, Tribal government operations, and the general welfare funds established under
19 this Chapter as follows:

20 (1) For Harrah's Cherokee Casino Resort:

21 (a) General Welfare Exclusion (GWE) Distributions, including Per Capita Distributions
22 (§§ 16C-5, 16C-6) 50.00%

23 (b) Endowment Fund No. 2

24 (c) Business and Economic Development Fund

25 (d) Debt Service Sinking Fund (§ 16C-14

26 (e) Capital Improvement Program (§ 16C-17

27 A portion not to exceed 45.5% of Harrah's Cherokee Casino Resort gaming net
28 revenues as determined in a needs-based budget approach shall be allocated to the
29 following Programs as approved by the Tribal Council in the adoption of the annual
30 budget:

31 (f) Tribal General Fund;

32 (g) Housing Fund (§ 16C-15);

33 (h) Higher Education Fund (§ 16C-16);

34 (i) Cherokee Central Schools Assistance Fund (§ 16C-18);

35 (j) Kituwah Language Immersion (§ 16C-21).

36

37 (2) For Harrah's Cherokee Valley River Casino:

- 1 (a) General Welfare Exclusion (GWE) Distributions, including Per Capita Distributions
2 (§§ 16C-5, 16C-6)50.00%
- 3 (b) Technology Enhancement Fund
4 A portion not to exceed 45.5% of Harrah's Cherokee Valley River Casino earning net
5 revenues as determined in a needs-based budget approach shall be allocated to the
6 following programs as approved by the Tribal Council in the adoption of the annual
7 budget:
- 8 (c) Tribal General Fund;
9 (d) Health Program Supplemental Fund/PHHS;
10 (e) Police and Corrections Fund (§ 16C-20).
- 11 (B) In accordance with 130B-13(b) effective October 1, 2016, the Cherokee Indian Hospital
12 Authority shall be funded at a percentage of 4.5% of net distributable gaming revenues from
13 Harrah's Cherokee Casino Resort and Harrah's Cherokee Valley River Casino. This value
14 shall be calculated as a static percentage of net distributable revenues and not a static
15 monetary or budgetary value.
- 16 (C) During the annual budget process, the Finance Office will determine the gaming revenue to
17 be budgeted for the fiscal year and this amount shall be the baseline gaming revenue amount
18 by property. At all times, 50 percent of the gaming revenues received will be divided and
19 deposited into the General Welfare Exclusion (GWE) Fund and Per Capita Distribution
20 Fund listed above. For purposes of the Cherokee Central Schools Assistance Fund, if the
21 gaming revenue from Harrah's Cherokee Casino Resort received from the fiscal year
22 exceeds the baseline gaming revenue amount by more than five percent, that excess shall be
23 distributed to a designated reserve fund for the Cherokee Central Schools Assistance Fund
24 as provided for in Section 16C-24. For all other funds other than the General Welfare
25 Exclusion (GWE) Fund and Per Capita Distribution, if the Gaming Revenue from any
26 Tribal Gaming Operation received from the fiscal year exceeds the Baseline Gaming
27 Revenue Amount that excess shall be distributed as follows:
- 28 (1) Higher Education Endowment Fund10%
29 (2) Endowment Fund No. 240%
30 (3) Capital Improvement Program10%
31 (4) Debt Service Sinking Fund15%
32 (5) Cherokee Sovereign Wealth Fund10%
33 (6) Endowment Fund No. 110%
34 (7) Technology Enhancement Fund5%
- 35 (D) A fund balance of at least ten percent and not to exceed 50 percent of the annual Tribal
36 budget shall be maintained in the General Fund to ensure cash flow continuity. Any balance
37 in excess of that amount at the end of each fiscal year shall be distributed to the Endowment
38 and Investment Funds. There are no fund balance limitations for the other governmental
39 operations and general welfare funds established in this Chapter.

1 (E) In the event that the gaming revenue available creates a budget shortfall or a rebalancing of
2 Tribal priorities in the budget is needed, the Finance Office will balance the budget utilizing
3 available resources in accordance with limits identified in 16C-9(c).

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6 BE IT FINALLY RESOLVED that all resolutions that are inconsistent with this resolution are
7 rescinded, and that this resolution shall become effective when ratified by the
8 Principal Chief.

9
10 *Submitted by Cory Blankenship, Secretary of Treasury, and Michael W. McConnell, Attorney*
11 *General.*